

40 KAR 2:220. Application procedure for obtaining going-out-of-business sale permits in excess of two (2) sales in a four (4) year period.

RELATES TO KRS 365.447

STATUTORY AUTHORITY: KRS 15.180, 365.447

NECESSITY, FUNCTION, AND CONFORMITY: KRS 365.447 requires in pertinent part the Office of the Attorney General to promulgate administrative regulations pertaining to applications by any party for more than two (2) going-out-of-business sale permits during a four (4) year period. This administrative regulation sets forth the procedures for applying for a subsequent permit, the investigation to be initiated and conducted by the Attorney General, and charges to the applicant, pursuant to KRS 365.447.

Section 1. Application Procedure for Excess Permits. When any individual, partnership, corporation or other firm seeks a permit to conduct more than two (2) going-out-of-business sales within a four (4) year period, such party shall obtain, complete, and submit to the Office of the Attorney General, Division of Consumer Protection, an application form to obtain such permit.

Section 2. Investigation to Determine Legitimate Business Purpose. (1) Upon receipt of such application, the Office of the Attorney General, Division of Consumer Protection, shall initiate and conduct an investigation to determine if there is a legitimate business reason to conduct more than two (2) going-out-of-business sales within a four (4) year period. The Division of Consumer Protection shall investigate the circumstances of all previous going-out-of-business sales conducted by the applicant within the previous four (4) years and consider all relevant information in reaching its decision. Relevant business records and information shall include information relating to activities and going-out-of-business sales conducted in other jurisdictions. The Attorney General may request additional information and relevant business records from the applicant in determining the legitimacy of the business reason for the application.

(2) The Attorney General shall determine if there is a legitimate business reason for the applicant's request for any excess permits and deny or grant the permit within thirty (30) days of receiving the application.

(3) Valid business reasons for conducting more than two (2) going-out-of-business sales within a four (4) year period shall include:

- (a) Insolvency of the business or owner(s);
- (b) Unprofitability or inadequate profitability of the business;
- (c) Retirement of the owner(s);
- (d) Intent of the owner(s) to engage in other enterprises or endeavors;
- (e) Termination of the business to free assets to pay any judgment of any court;
- (f) Death of the owner(s), and the representatives of the estate(s), or their heirs, distributees, devisees, legatees, or their successors and assigns seek to terminate the business;
- (g) Where the business is required or compelled to be discontinued because:
 - 1. The premises upon which it is being conducted have been taken by eminent domain; or
 - 2. The premises upon which it is being conducted must be vacated pursuant to court order pursuant to a legal or judicial proceeding; or
 - 3. The business's lease on the premises upon which it is operating has been terminated by the landlord, or the landlord will not renew the lease.

(4) Business reasons which are not legitimate for the purposes of KRS 365.447 shall include, but not be limited to:

- (a) Opening the business with intent to conduct a going-out-of-business sale with inventory brought in for that purpose, whether such inventory is owned by the business owner(s) or not, more

than ninety (90) days prior to the application for the permit;

(b) Buying into an existing business with the intent to conduct a going-out-of-business sale, and bringing in large quantities of goods for that purpose, whether such inventory is owned by the business owner(s) or not, more than ninety (90) days prior to the application for the permit.

Section 3. The applicant may be charged the costs of the investigation. The Attorney General may charge the applicant for the costs of the investigation. The actual costs shall be assessed the applicant by the Attorney General, however the minimum charge shall be twenty-five (25) dollars, and the maximum charge \$250.

Section 4. Any applicant whose application is denied by the Attorney General following investigation may seek appeal of the denial pursuant to 40 KAR 2:230 and 40 KAR 2:240. (21 Ky.R. 704; Am. 1463; 1720; eff. 11-17-94.)